

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ADAM RANDOLPH POWELL,

No. 2:23-cv-2275 KJN P

Plaintiff,

ORDER & FINDINGS &
RECOMMENDATIONS

v.
JEFF LYNCH, et al.,

Defendants.

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the reasons stated herein, the undersigned recommends that this action be dismissed.

On October 18, 2023, the undersigned issued an order screening plaintiff's complaint. (ECF No. 7.) The undersigned found that the complaint stated potentially colorable claims against defendants Lynch and Does 1-4 based on their alleged failure to have the ventilation in plaintiff's cell repaired. (Id.) The undersigned found that plaintiff's claims against defendants Lynch and Doe 4 based solely on their supervisory status and all claims against defendants Andes and O'Brien were not potentially colorable. (Id.)

In the October 18, 2023 order, the undersigned granted plaintiff thirty days to either file an amended complaint or return the notice indicating that he opted to proceed on the original complaint as to the potentially colorable claims against defendants Lynch and Does 1-4. (Id.)

1 The October 18, 2023 order warned plaintiff that failure to comply with the order would result in
2 a recommendation that this action be dismissed. (Id.)

3 Thirty days passed from October 18, 2023 and plaintiff did not file an amended complaint
4 or the notice indicating that he opted to proceed on the potentially colorable claims against
5 defendants Lynch and Does 1-4.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall appoint a
7 district judge to this action; and

8 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
9 Local Rule 110; Fed. R. Civ. P. 41(b).

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, plaintiff may file written objections
13 with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
15 failure to file objections within the specified time may waive the right to appeal the District
16 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: November 30, 2023

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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